IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 487 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DASHRATH ALIAS CHILO ALIAS CHICHI MANUBHAI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 487 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

MS NANDINI JOSHI,AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 20/05/2003

ORAL JUDGEMENT

1. The petitioner, in this petition under Article 226 of the Constitution of India,has challenged the order of detention dated 13.11.2002 passed by the Commissioner

of Police, Baroda City, the respondent no.2 herein. The petitioner is detained under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (in short 'the Act'). In the grounds of detention of even date supplied to the petitioner, the detaining authority has placed reliance on three pending trial cases registered against the petitioner by Gorwa Police Station being CR No.14 of 2000 for offences punishable under sections 394, 332, 504, 186, 114 of IPC and section 135 of the Bombay Police Act; C.R.No. 68 of 2002 for offences punishable under sections 324, 323,114 of IPC and section 135 of the Bombay Police Act and CR No. 153 of 2002 for offences punishable under sections 435, 427 and 114 of the IPC registered on 25.9.2002. Besides the aforesaid cases, the detaining authority has also placed reliance on two incidents dated 5.10.2002 and 8.10.2002 wherein the petitioner was involved in extorting money at the point of knife. Statements of witnesses with respect to the said two incidents were recorded. However, their identity was not disclosed to the detenu while exercising powers under section 9(2) of the Act. Considering the above material, the detaining authority has recorded a finding that the detenu being a dangerous person within the definition of section 2(c) of the Act, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention of the petitioner is necessary and, therefore, while exercising powers under section 3(2) of the Act, the order of detention has been passed.

2. The learned Counsel for the petitioner has raised many contentions while challenging the order of detention. However, it is not necessary for me to deal with each and every contention in view of the fact that the petition is required to be allowed on the ground that the solitary instance mentioned in the grounds of detention is not of such magnitude and intensity as to have the effect of disturbing the public order so as to pass an order of detention. In the submission of learned Counsel for the petitioner, there is no material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality. In the circumstances, it is submitted that the order of detention is required to be quashed and set aside only on this ground. Learned Counsel has placed reliance on the decision in the case of Darpankumar Sharma Vs. State of Tamil Nadu, 2003 AIR SCW 463.

3. As stated above, three cases have been registered against the detenu; one being of 2000 and two of 2002 and all are pending trial. There is no dispute to the fact that the detenu has been released on bail in respect of the last offence registered against him on 25.9.2002. It appears that after his release, he has indulged in anti-social activities and was involved in the incident which took place on 5.10.2002 and 8.10.2002. Having gone through the statements of witnesses with respect to the said two incidents, it appears that they are only solitary instances wherein the detenu is alleged to have robbed in a public place at the point of knife. Except the statements of two witnesses, there does not appear to be any material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality. True, in the grounds of detention, the detaining authority has stated that by committing these offences in public place, the detenu created a sense of alarm, scare and feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the detenu from acting in a manner prejudicial to the maintenance of public order. In my opinion, this ground is enough to quash the order of detention made by the respondent authorities.

4. In the result, the petition is allowed. The impugned order of detention dated 13.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute with no order as to costs. Direct Service.

(Kshitij R.Vyas,J.)

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